

Nos. 13-17102, 13-17154

IN THE  
**United States Court of Appeals  
For The Ninth Circuit**

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FACEBOOK, INC.,

*Plaintiff-Appellee,*

v.

POWER VENTURES, INC.

&

STEVEN SURAJ VACHANI,

*Defendants-Appellants.*

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Appeal from the United States District Court  
for the Northern District of California  
Case No. 5:08-cv-05780-LHK, The Honorable Lucy Koh

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**FACEBOOK'S UNOPPOSED MOTION FOR EXTENSION OF TIME  
OR IN THE ALTERNATIVE, STAY OF THE BRIEFING SCHEDULE,  
PENDING RESOLUTION OF MOTIONS TO UNSEAL  
AND CORRECT THE RECORD**

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Plaintiff-Appellee Facebook, Inc. moves for an extension of time in which to file its Answering Brief and Supplemental Excerpts of Record—or in the alternative, a stay of the briefing schedule—until one week following the date by which the Court has resolved both Facebook's pending unopposed Motion to Unseal Documents (Dkt. No. 32) and the parties' Stipulation to Correct the Record (Dkt. No. 31). In support of this motion, Facebook states as follows:

1. Facebook's Answering Brief was originally due April 21, 2014, and is presently due on May 21, 2014. However, there remain pending in this Court an unopposed motion to unseal certain documents filed in the district court, as well as a stipulation to correct the record to include documents that were lodged but not filed in the district court. Absent an extension or stay, Facebook will need to file separate sealed and public versions of its brief and Supplemental Excerpts of Record on May 21, only to submit new, public versions of both if, as is likely, the unopposed motion and stipulation subsequently are granted.

2. There is good reason to think that the unopposed motion and the stipulation indeed will be granted. To understand why, some brief background about the case is appropriate. This is a case in which Facebook brought suit against De-

fendant-Appellees, and was granted summary judgment in its favor, Dist. Ct. Dkt. No. 275, as well as damages and injunctive relief, Dist. Ct. Dkt. No. 372.

3. The district court's standing order required the parties to lodge with the district court (but not to file) all expert reports. Pursuant to the standing order, Facebook lodged the Expert Report of Bob Zeidman and Lawrence Melling with the district court. The court relied upon that report when it granted Facebook summary judgment. The parties have stipulated that, pursuant to Federal Rule of Appellate Procedure 10(e)(2)(A), the Expert Report should be made part of the record on appeal. *See* Dkt. No. 31. The parties filed a joint Stipulation to Correct the Record ("Stipulation") with this Court on May 13, 2014. Dkt. No. 31.

4. In addition, because discovery in this case involved information that was, at the time, confidential, proprietary, or private—such as information relating to Facebook's security systems and Defendants' computer program—the parties stipulated to a protective order allowing them to file certain materials under seal. Dist. Ct. Dkt. No. 95. Under this Court's rules, materials sealed below pursuant to the protective order remain sealed on appeal. *See* Ninth Cir. R. 27-13, Adv. Comm. Note. However, due to the passage of time, the sensitivities that once made it necessary for certain materials to be kept confidential no longer exist. For the convenience of the Court, the parties, and the public—and consistent with this Court's admonitions about the limited circumstances under which certain materials

may be sealed, *see Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678-79 (9th Cir. 2010)—on May 13, 2014, Facebook filed an Unopposed Motion to Unseal Documents (“Motion to Unseal”). Dkt. No. 32.

5. As of the time of the filing of this motion, the Stipulation and Motion to Unseal have not been adjudicated. Facebook understands from conversations with the Clerk’s Office that the parties’ Stipulation and Motion to Unseal may not be resolved before Facebook otherwise would be required to file its Answering Brief. Facebook therefore respectfully requests an extension of time to file its brief and Supplemental Excerpts of Record, in order to avoid filing sealed versions now only to replace them with public versions later.

6. Facebook has exercised diligence in preparing its brief and in seeking to correct the record and to unseal the relevant documents. Facebook will be able to file its brief promptly upon adjudication of the outstanding motions.

7. Facebook provided notice to Defendants regarding this motion. Defendants indicated that they do not oppose this motion.

8. The court reporter is not in default with regard to any designated transcripts.

## CONCLUSION

For the foregoing reasons, the Court should grant an extension of time, or in the alternative stay the briefing schedule, until one week after the Court has resolved the Motion to Unseal and the Stipulation to Correct the Record.

Respectfully submitted,

Dated: May 19, 2014

ORRICK, HERRINGTON & SUTCLIFFE LLP

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*/s/ Eric A. Shumsky*

Eric A. Shumsky  
Attorney for Plaintiff-Appellee

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**DECLARATION OF ERIC A. SHUMSKY IN SUPPORT OF  
FACEBOOK'S UNOPPOSED MOTION FOR EXTENSION OF TIME  
OR IN THE ALTERNATIVE, STAY OF THE BRIEFING SCHEDULE,  
PENDING RESOLUTION OF MOTIONS TO UNSEAL  
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*Counsel for Plaintiff-Appellee*

**DECLARATION OF ERIC A. SHUMSKY**

I, ERIC A. SHUMSKY, state as follows:

I am counsel for Plaintiff-Appellee Facebook, Inc. in this matter. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the facts set forth in the foregoing motion are true and correct to the best of my knowledge and belief.

Executed this 19th day of May, 2014, in Washington, D.C.

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*/s/ Eric A. Shumsky*

Eric A. Shumsky  
Attorney for Plaintiff-Appellee

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 19, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Brian P. Goldman*

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Brian P. Goldman  
Attorney for Plaintiff-Appellee